



2025:DHC:7608-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 01.09.2025**+ **W.P. (CRL) 2643/2025****MS MONIKA TIWARI**

.....Petitioner

Through: Mr. Kuldeep Kumar and Syed
Nilofar Akhtar, Advs. along
with petitioner.

versus

THE STATE GNCTD AND ORS

....Respondents

Through: Mr. Sanjay Lao, St. Counsel
(Crl.) with Mr. Abhinav Kr.
Arya, Mr. Aryam Sachdeva and
Mr. Priyam Agarwal, Advs.
with Inspector Manoj, PS
Shalimar Bagh.
Mr. Kushal Raj Gupta and Ms.
Muskan Mahajan, Advs. for R-
5 & R-6 along with R-5 and the
minor child 'A'.

CORAM:**HON'BLE MR. JUSTICE VIVEK CHAUDHARY****HON'BLE MS. JUSTICE SHALINDER KAUR****VIVEK CHAUDHARY, J (ORAL)**

1. The present petition, under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed by the petitioner-mother, seeking issuance of writ of habeas corpus for the production and release of her Minor Son, Master 'A' from the illegal detention / custody of the



2025:DHC:7608-DB



respondents no. 5-father and 6.

2. Briefly stated, the facts are that the petitioner and the respondent no. 5 got married on 28.02.2017 at the Arya Samaj Mandir as per Hindu rites and rituals and started living together at Shalimar Bagh, Delhi. Out of their wedlock, only child, Master 'A' was born on 29.07.2021.

3. It is claimed by the petitioner that owing to matrimonial discord, she moved to live with her parents in Delhi. On 10.07.2025, while the petitioner was at Work / Office as part of her daily routine, the minor child was at home with the maternal grandmother during the day, however, on the said date, the respondent no.5 went to the maternal home of the petitioner and had illegally removed the minor child from her custody, giving rise to the main grievance of the petitioner-mother, who was unaware of the present whereabouts of the child.

4. On the last date of hearing, the father/respondent no. 5 had appeared on advance notice and was directed to produce the minor child before us.

5. Today, the minor child is present in the Court along with respondent no. 5. The learned counsel for the respondent no. 5 submits that the petitioner-mother is involved in an extramarital relationship, therefore, is not competent to keep the custody of child, which will have deep bearing on the upbringing of the child. To fortify the said contention, the learned counsel has placed on record certain digital photographs.



2025:DHC:7608-DB



6. In response, the petitioner submits that these photographs were taken before their marriage, therefore, the submissions advanced on behalf of the respondent no. 5 is totally erroneous and has no bearing on the present writ petition.

7. Having heard the learned counsels for the parties and perused the record, to begin with, we may note that it is undisputed that the minor child was taken away by the father / respondent no.5 without the consent of the petitioner-mother.

8. On being queried, respondent no. 5 submits that he had taken the minor child, Master 'A' to Maharashtra, where his parents are currently residing, i.e., at H. No.1, Satnaka, Shiv Road, Panchganga Colony, Maharashtra. He further submits that owing to work, he left the custody of the minor child with his parents and came back to Delhi as he had been working at the SMC Insurances Brokers Pvt. Ltd. as a Senior Equity Dealer since 11.01.2021.

9. Although the respondent no.5 has claimed that from 10.07.2025, the child had remained at his parental home and also the respondent no. 5 remained with the child for few days. Nonetheless, the fact that the child is in the custody of his grand-parents and not of the father / respondent no. 5, who is residing and working for gain in Delhi, cannot be ignored.

10. This *prima facie* shows that the child had been taken to Maharashtra, so as to deprive the petitioner-mother of any access to the minor child, preventing the two from meeting each other, which is against the paramount interest of the child.



2025:DHC:7608-DB



11. It is to be noted that for the normal psychological, physical, emotional growth and overall well-being, it is necessary that the child should be living with both the parents, however, in cases of matrimonial disputes, the temporary / permanent custody, in the facts and circumstances of the case, may remain with either of the parents. The consideration that befalls the Court in such cases is the paramount interest and well-being of the child.

12. Furthermore, at this stage, we have no particular year as to when the photographs were taken and the veracity of the same has not been ascertained, therefore, this Court cannot make out the exact time period of the photographs placed on record.

13. The respondent no. 5 further informs this Court that the child had been going to pre-school in Shalimar Bagh near their matrimonial home.

14. Needless to say, now, the child has been dislocated not only from Delhi but from his pre-school, from both parents and the custody is with the grand-parents.

15. We are also conscious of the fact that the father is though a natural guardian, but instead of keeping the custody of the child with him, he has handed over the same to his parents in Maharashtra.

16. Keeping in view the tender age of the child, who was earlier residing with the petitioner/mother and had been taken away from her custody and also that at present, the child is not in the custody of the father but with the paternal grand-parents in Maharashtra, and taking into consideration the welfare of the child, this Court deems it



2025:DHC:7608-DB



appropriate that the custody of the minor child be handed over to the petitioner-mother.

17. We may also note that the child should also not remain deprived of the love and care of his father, which is an equally significant component of a child's overall development.

18. Keeping the above in mind, the father is provided with the visitation rights to meet with the child twice in a month i.e. on 2nd and 4th Saturday for two hours between 3:00 PM and 5:00 PM at the Children's Room, Tis Hazari Courts, Delhi. The petitioner-mother shall bring the child, for visitation with respondent no. 5. It is however made clear that the present is a temporary arrangement till appropriate orders are passed by a Court of competent authority, in case any petition is moved by either of the parties.

19. With the above observations, the petition stands disposed of.

VIVEK CHAUDHARY, J

SHALINDER KAUR, J

SEPTEMBER 1, 2025
FRK/KM